

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

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Application of)	
Hargray Wireless, LLC)	
)	Docket No. 2003-227-C
for Designation as an)	
Eligible Telecommunications)	
Carrier Under 47 U.S.C. § 214(e)(2))	

OPPOSITION OF HARGRAY WIRELESS, LLC

Hargray Wireless, LLC ("Hargray", the "Company"), by counsel and pursuant to 26 S.C. Code Ann. Regs. 103-825(A)(3), hereby opposes the Petition to Intervene Out of Time ("Petition") filed on June 5, 2007, by United Telephone Company of the Carolinas d/b/a Embarq ("Embarq").

I. INTRODUCTION

In the Petition, filed just five business days prior to the date for filing testimony, Embarq asks the Commission to allow it to intervene in a proceeding that has been pending for nearly four years. Hargray's Application demonstrated that Embarq would not be adversely affected by a grant of ETC status to Hargray, and there have been no material changes that would alter that fact. Embarq, an ILEC that was doing business in South Carolina at the time Hargray's Application was filed nearly four years ago, had ample opportunity to request intervention within the permitted time. Granting Embarq's extraordinary request would only serve to further delay the receipt of critical high-cost support for the provision of high-quality wireless service in rural areas of South Carolina. For all of these reasons, Embarq's Petition must be dismissed.

II. DISCUSSION

Embarq's Petition comes nearly four years too late. Hargray's Application was filed July 24, 2003, and as Embarq concedes, the deadline for filing "was on or about September 25, 2003." Three years and nine months have passed since that date. By any measure, it is unreasonable to ask the Commission to stretch its deadlines by a matter of years.

In an attempt to justify its long delay in requesting intervention, Embarq argues that it has only now "fully developed its position" and that its interest had not become "clear and unambiguous" until it ended its affiliation with Sprint Nextel. Petition at p. 2. This argument is hardly persuasive. The existence of a wireless affiliate with operations in South Carolina at the time of Hargray's Application did not prevent Verizon Communications, Inc. from timely intervening. Indeed, dozens of ILECs with wireless affiliates have intervened in ETC designation proceedings around the country. In addition, Embarq does not assert that it was affiliated with any wireless carriers then seeking ETC status in South Carolina. Thus, it is unclear why its position on the implications of Hargray's request for ETC status would have been "ambiguous".

Moreover, Embarq's predecessor in interest announced the spin-off of its wireline operations in December 2004, and Embarq was created in its current form in February 2006.¹ Embarq does not explain why it failed to request intervention at the time it became decoupled from Sprint and Nextel, when its position on the Hargray Application apparently crystallized. Although Embarq claims that the Hargray matter lay dormant for some time, Embarq surely was aware of the Commission's appointment of a hearing officer in the case in September 2005, Hargray's Amendment filed in June 2006, and the

¹ See company history at <http://www2.embarq.com/companyinfo/history/>.

Commission's order granting confidential treatment in July 2006. Embarq could have attempted to intervene out of time at any of those junctures. Instead, Embarq waited until a week before the testimony filing deadline.

The timing of Embarq's Petition is curious. With only two weeks remaining until the hearing, it now seeks "expedited consideration" of its Petition.² Embarq even takes the extraordinary step of asking the Commission to decide the matter prior to the date by which Hargray is entitled to respond under the Commission's rules.³ Embarq offers no proposal with respect to the testimony deadline, which coincided with its letter requesting expedited consideration. Nor does it suggest the Commission move the hearing date. Yet, a grant of Embarq's Petition would undeniably require the establishment of new procedural dates on an already crowded docket calendar. These dates were established on May 23, some two weeks before Embarq filed its Petition. Thus, Embarq compounded its years-long delay in requesting intervention by waiting until the eleventh hour to file a Petition whose timing would inevitably push Hargray's case even further back on the Commission's agenda. There is no conceivable reason for the Commission to make rural consumers wait even longer for improved wireless service.

III. CONCLUSION

Even in close cases, the Commission's deadlines simply must be respected. "Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *Panhorst v. U.S.*,

² Letter from Elliott & Elliott, P.A. to Charles L. A. Terreni dated June 12, 2007.

³ See *id.* Embarq requested consideration of the Petition at the weekly meeting scheduled to be held June 13. Under the Commission's rules, Hargray must file a response within 10 days of service of the Petition, which is June 15. 26 S.C. Code Ann. Regs. 103-825(A)(3).

241 F.3d 367, 373 (4th Cir. 2001). But this isn't a close case. Embarq's Petition didn't fall just on the other side of a filing deadline – indeed, its tardiness in filing can be measured in years. Nor will the enforcement of the Commission's deadline in this instance result in any inequity. Embarq is presumed to have been aware of Hargray's Application and its potential impact on Embarq's local operations since 2003. By its own admission, Embarq is currently participating in ongoing ETC certification rulemakings and its interests are thereby represented going forward. Its claim of a conflict of interest prior to its disassociation from Sprint Nextel is unpersuasive given the timely intervention of Verizon, whose wireless affiliates have extensive operations throughout the state.

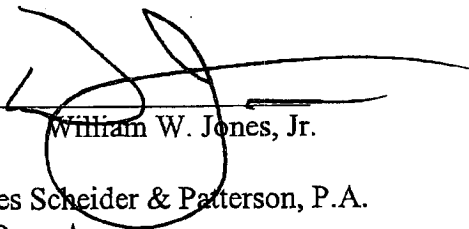
There is simply no reason for the Commission to bend over backwards to give special treatment to Embarq in a way that would deprive its rules of any meaning and impose further delays on this proceeding. Accordingly, the Commission should dismiss Embarq's Petition.

Respectfully submitted,

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Dated: June 13, 2007

CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 13th day of June 2007, copies of the foregoing **Opposition of Hargray Wireless, LLC** was placed in the United States mail, via first class, postage prepaid to:

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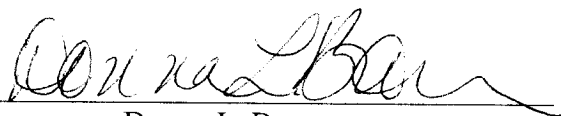
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